



DEPARTMENT OF NATURAL RESOURCES

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MEMORANDUM

DATE: May 15, 2002

TO: Land Reclamation Commission

FROM: Larry P. Coen, R.G., Staff Director

SUBJECT: Land Reclamation Program Director's Recommendation
Holcim Mine Permit Application

The following constitutes the Director's Recommendation based on a review of the comments received and the required components of the recommendation:

Recommendation of the Staff Director

Holcim's Land Reclamation Program's (LRP) permit for its original 64 acres was issued on October 2, 2000. The company submitted a Land Reclamation application for a 1,563-acre expansion, which was received on September 20, 2001. This will expand the original permit of 64 acres to 1,627 acres. The company proposed an immediate bonding of an additional 68 acres along with the original 64 acres. The remaining 1,495 acres will be bonded in the future as mining progresses.

The Land Reclamation Act at Section 444.773.3, RSMo, requires that the Staff Director make a formal recommendation to the Commission regarding the issuance or denial of an applicant's permit within thirty days after the close of the public comment period. The comment period closed on February 28, 2002, although it has not been possible to complete a recommendation until this time, given the volume of comments. After consideration of the issues presented in the more than 1,100 letters that were received, it is the Staff Director's recommendation to approve the Holcim mine permit application for a new total of 1,627 acres in Ste. Genevieve County.

Further, it is also the recommendation of the Staff Director that the Commission strongly consider granting a hearing on this approval in order to thoroughly investigate the complexity of the various concerns for future impacts of mining at this site.

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It should be noted that the department has requested that the Corps of Engineers prepare an Environmental Impact Statement (EIS) as part of its consideration of the Clean Water Act Section 404 Permit. We believe this is a reasonable request, given the size of the project and the extensive impacts that would occur. That Section 404 Federal Permit would be necessary to conduct the changes to wetlands that would be needed for the project to proceed. At this point, the Corps has not decided whether it will require an EIS for the project.

Required Components of the Recommendation

The Land Reclamation Act requires that the Staff Director make a formal recommendation regarding the issuance or denial of an applicant's permit. Rules at 10CSR 40-10.040(1)(A) require that the Staff Director's recommendation be based on several specific items as follows:

1. The application's compliance with Section 444.772, RSMo;
2. The application's compliance with 10 CSR 40-10.020;
3. Consideration of any written comments received;
4. Whether the operator has had a permit revoked or a bond forfeited;
5. If a petition is filed and a hearing is held, the Commission shall make the decision; and
6. Past and present noncompliance evaluation.

Items 1 and 2: These requirements state that the application must meet the criteria for application completeness in both the statute and the rules. The staff review of the permit application from Holcim determined that the application document met the standards of both the statutes and the rules.

Item 3: For the consideration of all written comments, please refer to Attachment 1.

Item 4: The company has never had a permit revoked or a bond forfeited, in accordance with the full language of the rules at 10CSR 40-10.040(1)(A).

Item 5: Multiple requests for hearing have been received and will be presented to the Commission in its May meeting. This item may be integral to the final decision of the Commission, but is not part of this recommendation.

Item 6: As a result of the statutory changes made to the Land Reclamation Act in 2001, a compliance review is now part of the permitting process. A review of the compliance history for

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Holcim reveals several Notices of Violation, but no pattern of violations with the laws administered by the Missouri Department of Natural Resources within the State of Missouri during the past five years. The number and severity of these violations are typical of operations of this size and do not necessarily suggest that the company would be in noncompliance in the future. Please refer to Attachment 2 for specific information.

Summary Comments

As the Commissioners may note in the following pages, there have been many issues raised. They are complex and some are beyond the scope of the Land Reclamation Act. These include comments regarding the cement plant, the harbor, and other comments directed at the site as a whole. There are complex issues raised regarding the mining plan, which are related to concerns about potential future impacts. Such future impacts cannot be measured today, and many issues are of such complexity that no one person will possess the technical expertise to make a complete and thorough evaluation of the potential for such a future impact. As Staff Director, I have recommended approval of the pending mining permit application because, in fact, the company has satisfied all the requirements of the Land Reclamation Act. I would also recommend, however, that the Commission strongly considers granting a hearing on this approval in order to thoroughly investigate the complexity of the various concerns for future impacts of mining at this site.

LPC:slg

Attachments

c: Holcim, Inc.

Attachment 1

Response to Public Comments Regarding the Proposed Holcim, Inc., Lee Island Project

The Staff Director of the Land Reclamation Program received many letters in response to the public notice, both supporting and in opposition to the proposed Holcim, Inc., project. The letter count is as follows:

Letters received on or before the deadline of February 28, 2002:

Letters of Support	793
Letters of Opposition or Concern	376
Including a Request for Informal Meeting and Hearing	226
Including a Request for a Hearing Only	4
Total letters received during the comment period:	1,169

Letters received after the deadline of February 28, 2002:

Letters of Support	62
Letters of Opposition or Concern	59
Including a Request for Informal Meeting and Hearing	14
Including a Request for a Hearing Only	0
Total letters received after the comment period:	121

Letters of support generally expressed expectations that the facility would further economic activity in the area and provide jobs for the local population.

Many of the letters of opposition were written from a perspective of viewing the entire proposed 4,000-acre development that is to take place in stages over many decades. While it is certainly understandable that these issues would be raised from a global perspective, it is the legal obligation of the Staff Director under the Land Reclamation Act to only consider the application for the surface mining expansion permit, which is 1,563 acres.

The letters of opposition raised a number of issues, which can be categorized into several distinct areas. Many of the letters were form letters signed by different individuals. Listed below are the issues raised (whether they were raised in one letter or several) and staff analysis of the issues raised:

Impacts to Public Health and Air Quality

Some individuals wrote that there are already bad air days because of existing industries such as River Cement, Ameren UE, and Doe Run, so the Holcim facility will simply create more and worse bad air days. There is particularly a concern regarding asthma and the potential for

adverse impacts on many with severe respiratory diseases. There is a concern that the air emissions from the proposed mining operation and cement plant will precipitate a significant degradation to the air quality of the St. Louis area and have a resulting effect on public health. Dust concerns from mining relates to blasting, trucking, and hauling. There are also concerns from the Illinois side of the Mississippi River. There is a concern that commercial farming in Illinois across from the Holcim facility will be impaired from dust and air issues. Finally, there is a concern for several impacts expressed by the American Bottom Society.

Although air emissions are beyond the authority of the land reclamation permit, it is noted that dust must be contained within the property owned by Holcim. Any activities at the mine site, which will create emissions, would be evaluated by the Missouri Department of Natural Resources' Air Pollution Control Program to determine whether or not these emissions will, in fact, affect the St. Louis area. The facility requires air permits for the fully developed operation.

Water Quality

Water quality is listed as a concern in several letters, but the descriptions of potential water quality impacts are not very specific. For the purposes of public comment, the Staff Director offers the following: Mining operations are not allowed to negatively impact water quality beyond the mine site. Off-site impacts of mining effects is subject to strict enforcement. The Land Reclamation Program is committed to respond with enforcement to negative water quality impacts that are off the mining site, and these requirements are equally true of the applicable storm water and discharge permits of mining operations. The department's Water Pollution Control Program will require and enforce permits to be issued to Holcim that will protect water resources.

Groundwater Concerns

Comments state that many area water wells are in the range of 100 feet deep, yet, the facility may impact aquifers up to 900 feet deep. There is a concern that this will impact residential water wells. The Land Reclamation Act has no authority to address subsurface groundwater concerns. The department's Water Pollution permit will also protect groundwater resources. The department is concerned about these potential impacts and has discussed this work with the Geological Survey and Resource Assessment Division, which has the ability to help assess any impacts. The Geological Survey and Resource Assessment Division or a private geologist may be able to offer an opinion on whether there would be impacts on local wells. There are Missouri laws that give property owners certain rights to their groundwater. However, this would be an individual matter and beyond the scope of the Land Reclamation Act.

Wetlands

Several comments expressed concern for the protection of wetlands that may be impacted by the operation. While the 4,000-acre tract of land owned by Holcim, Inc., may contain various acres

of wetlands, none of the wetlands delineated by the Corps of Engineers are in the area that would be mined. Direct impacts to other wetlands would be regulated by Clean Water Act Section 404 Permits from the U.S. Army Corps of Engineers or the water quality certification that would be issued by the Department of Natural Resources' Water Pollution Control Program. That permit process would evaluate the impacts the mining site would have on wetlands.

Forest Resources

Several comments expressed concern for the forest resources in the project area. The surface mining activity will eventually destroy all of the vegetative resource on the 1627-acre mine site and may have additional impacts on other areas for roads, processing, and related activities. The Land Reclamation Program and the Land Reclamation Act recognize this and require concurrent reclamation. This means that an operator cannot proceed with mining without also proceeding with reclamation behind the mining cycle. The Lee Island site would eventually have about 1,627 acres under a Land Reclamation permit, but several areas of the site will be in different stages of the mining and reclamation process at any one time. Some acres will be untouched, some will be in open pit, some will be regraded, and some will be in complete reclamation.

Wildlife and Biodiversity

Several comments expressed concerns for endangered species, particularly the Indiana Bat. There are other concerns that endangered species will be destroyed, not just displaced. Some commentors wrote they like to go bird watching and hiking in Ste. Genevieve County, and this facility will impair or terminate that possibility. There is no question that there would be an impact to wildlife and natural areas as a result of mining. Part of this impact includes the loss of vegetation, food source, and shelter displacement. Holcim's current reclamation plan has provisions to restore many acres of wildlife habitat. The Land Reclamation Act does not include authority to require actions related to endangered species. However, the company has addressed this issue in its current reclamation plan.

Destruction of the Environment

Several comments expressed concern for the overall impacts related to converting this relatively large land area into a mine. The long-range plans of the company, if permitted and implemented, would certainly radically change the environment as it naturally occurs. There will be a removal of lithologic formations, especially of limestone and of any overlying formations. It will become an industrial site for some period of time prior to transitioning to its later land contours and vegetative cover. According to the current reclamation plan, most of the mine area would be reconstructed into a natural setting after mining occurs; and the majority of the site would be maintained in its existing condition as a buffer area around the mining area. The commenters are questioning the value of the cement product that will be used for future development against the value of the natural area that currently exists. This is a valid question. The Land Reclamation Act requires the Commission to make a final decision based on the balance between the two

sides of that very question. This ultimate decision may involve the use of criteria that are beyond those that the Staff Director can consider in making a recommendation to the Commission, since those are limited by regulation. However, the staff recognizes that there are important factors beyond those the staff may consider.

The NEPA process has not been completed.

A concern was expressed that the company is attempting to undermine the purpose of the National Environmental Policy Act (NEPA), the Endangered Species Act, and the Missouri Clean Water Law by incremental permitting processes. This is a valid concern, since state laws do not necessarily act in concert with each other; and most are not expressly tied to authorities that are exercised by federal agencies. The Land Reclamation Act is a state law without federal mandate or counterpart. In any case, Holcim, Inc., has submitted a 1,627-acre permit for their full mining operation at this proposed facility. The evaluation of how the National Environmental Policy Act, which applies as a federal requirement tied to federal permitting requirements, should be addressed at the Lee Island Site through those other permitting authorities that have federal requirements or oversight as part of their processes. These include such agencies as the U.S. Environmental Protection Agency, the Corps of Engineers, the Missouri Clean Water Commission, and the Missouri Air Conservation Commission, and NEPA may provide an avenue for involvement in those permitting processes.

Environmental Impact Assessment

Many letters call for an Environmental Impact Assessment before any further permits are issued to Holcim, Inc., at this site. Several Missouri agencies, including the Governor's Office and this department, agree a thorough assessment should be conducted. However, the state statutes under which this permit and other permits are considered do not provide the latitude to the department or Commission to defer permit decisions until such an assessment would be completed. The Environmental Impact Assessment is a part of the federal environmental permitting process, but is not part of the state process. The Land Reclamation Act does not make any reference to this process, but authorizes the Land Reclamation Commission, after a hearing, to order an operator to adopt any corrective measures, as necessary, to comply with other provisions of the Act. Federal law may require an Environmental Impact Assessment for the full development of this process for the federal permits that are required. However, the Land Reclamation Act does not grant the Commission any authority to require it, unless a decision to do so can be substantiated by the results of a formal hearing. The Land Reclamation Act also does not give Holcim the right to proceed without fully satisfying all other permits and their conditions. Any requirements or restrictions imposed by any other permitting authority will still be in effect, regardless of any permit received under the Land Reclamation Act. The Land Reclamation Act requires this recommendation be presented to the Land Reclamation Commission without delay. However, the Commission has the latitude to consider the issue of how the mining permit should be a part of the bigger picture.

Scenic, Cultural, and Historic Resources

Some letters expressed a concern that this facility will destroy or impair historic, cultural, and scenic resources of the area. Particular concern has been expressed for the French colonial heritage of Missouri and that local tourism business will suffer. There are written concerns for the historic landmarks and landscapes of the area, the Jefferson County Girl Scout Camp, and the beauty of the area. There are concerns for noise from blasting, property values, crops, and farm animals. Federal law, again, requires that cultural and historic resources be evaluated for federal permits. The Land Reclamation Act does not refer to this subject and does not grant any specific or general authority to require the company to investigate this concern, unless the Commission determines to require this as a condition that results from a hearing.

Future of the Community

Many local communities sent letters of support for the Holcim project, believing that they will provide a strong economic base and other advantages to the local area. There are no details to consider in these letters, except for the specific issues, which are addressed in this appendix.

Mining Permits without U.S. Army Corps of Engineers Permits

One comment addressed a concern that the company was attempting to get a mining permit without a Corps of Engineers permit. The Corps of Engineers does not have any review authority of the state mining permits issued under the Land Reclamation Act, and, as such, the company has no need to gain the Corps of Engineers' approval before applying for the mining permit. However, the mining permit does not waive any requirements that the company may have to get permits from the Corps of Engineers for impacts to water resources at the site.

The permit should be denied.

Many commenters requested that this permit be denied. The following types of comments have been made about the application itself:

- There must be a balance between industry and the conservation of land.
- Holcim has failed to prove why its permit should be issued.
- The application is incomplete.
- The mining projections by year are not specific enough.
- Maps in the application are incomplete.
- There is inadequate information regarding the proposed dam.
- The application relies on an unapproved draft wetland and stream protection plan.
- The application lacks a reclamation plan for waters of the state.
- The company has failed to show control of sediment and erosion.

The Land Reclamation Act at 444.767(3), RSMo 2000, encourages the Program to examine and accept or deny all applications, plans, and specifications submitted by the operator for the

method of operation, reclamation, and conservation of the area of land affected by the operator. The Program has made a complete review of the application against the requirements of the Land Reclamation Act, 444.760 to 444.790, RSMo 2000. Many letters have expressed the belief that the application is incomplete; however, the application is complete. The company has not included all information that all commenters would like to see. It may be of some benefit for the company to respond to the requests for additional information requests, but it cannot be required under the Act.

A History of Noncompliance

The commentors cited that the past Holcim noncompliance suggests future noncompliance. The letters state further that the company's past violations prove a history of noncompliance and suggest future noncompliance. Some complained that Holcim personnel have been evasive and arrogant at various meetings and encounters with the public. The new language of the Land Reclamation Act addresses noncompliance and requires that a history of noncompliance occurs when violations of a similar nature have been repeated at the same facility over time. Attachment 2 will detail the noncompliance that has been documented at the Holcim facilities over the last five years within the State of Missouri. While there have indeed been instances of noncompliance, there is no suggestion of a pattern or history of noncompliance that supports a recommendation to deny this permit application.

Comments Beyond the Scope of the Land Reclamation Act

In addition to some of the comments noted above, several other comments on the mining permit application under consideration are outside of the scope and authority of the Land Reclamation Act. Therefore, no discussion or response is offered for these comments by the staff of the Land Reclamation Program.

- This permit is for the quarry, but leads to the cement plant.
- Requests were made that all agencies work together on the full scope of the cement plant.
- This facility is a poor use of floodplains and wetlands.
- This facility will interfere with the recreation of the Mississippi River.
- No foreign owned companies should be allowed.
- There is a concern for mercury contamination from the cement kiln that will impact local lakes and fishing.
- Burning tires and coal will lead to air pollution. The company should seek cleaner fuels for the cement plant.
- The Webster Groves Nature Study Society will be impacted and impaired as an organization. Their ability to provide natural areas for study will be significantly diminished.
- Why did the company change their name from Holnam to Holcim?
- The area has already been harmed by the contamination in Herculanum from Doe Run. The area does not need further environmental damage.

- There are concerns about the proximity of the Holcim facility to the environmental issues of the Doe Run facility at Herculaneum.
- There are concerns about cancer from environmental pollutants associated with the cement plant.
- There will be increased barge traffic.

Attachment 2

Noncompliance Issues

One issue that must be considered as part of this recommendation relates to noncompliance, both past and present, related to both Holcim and any parent or sister companies within Missouri over the past five years. A total of four Notices of Violation have been issued to the company during the last five years in Missouri. The specific information is listed below.

Land Reclamation Program

Holcim received one Notice of Violation dated January 16, 2001, from the Land Reclamation Program for activities at the Lee Island facility. The citation was for activities conducted on the 35-acre expansion before the Commission could act on the approval of that application. The Program and Commission always consider regulated activities outside a permitted and bonded area to be serious in nature. This noncompliance was resolved through a legal settlement. There are no other past or on-going violations of the requirements of the Land Reclamation Act.

Water Pollution Control Program

The company received one formal Notice of Violation from the Water Pollution Control Program within the five-year review period. The Notice of Violation was issued on April 14, 1998. This violation relates to an exceedance of the storm water outfall limits at the Clarksville Plant in Missouri. This Notice was considered to be in the range of “minor” to “moderate” in significance by the Water Pollution Control Program.

Air Pollution Control Program

The company received two Notices of Violation from the Air Pollution Control Program during the five-year review period. These violations relate to exceedances of opacity at the Clarksville Plant in Missouri. These are dated November 2000 and August 2001. Both Notices of Violation were issued for opacity in excess of the 40% limit. The Air Pollution Control Program believes that these violations should be considered to be “moderate” in nature.

According to the Air Pollution Control Program, “Moderate violations pose a significant risk to human health and safety. In these cases, the violations were short term in nature.”

In addition to the above two Notices of Violation, the Air Pollution Control Program did issue one Notice of Excess Emission. This is not a Notice of Violation and was not upgraded to that status by the program.

Hazardous Waste Program

The company has received no Notices of Violation within the five-year period of review.